

1  
2  
3  
4  
5  
6  
7 ZAHIR NASERI,  
8 Plaintiff,  
9 v.  
10 CITY AND COUNTY OF SAN  
11 FRANCISCO,  
12 Defendant.

Case No. 24-cv-05413-TSH

**ORDER GRANTING MOTION TO  
DISMISS**

Re: Dkt. No. 37

**I. INTRODUCTION**

Pending before the Court is Defendant City and County of San Francisco's Motion to Dismiss Plaintiff's Second Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF No. 37. Plaintiff Zahir Naseri filed an Opposition (ECF No. 38) and Defendant filed a Reply (ECF No. 39). The Court finds this matter suitable for disposition without oral argument and **VACATES** the January 23, 2025 hearing. *See* Civ. L.R. 7-1(b). For the reasons stated below, the Court **GRANTS** the motion.<sup>1</sup>

**II. BACKGROUND**

Plaintiff Zahir Naseri has worked as a "TNC" (transportation network company) driver for Uber and Lyft in the San Francisco Bay Area for almost nine years, including in the City and County of San Francisco and at the San Francisco International Airport ("SFO"). Second Am. Compl. ("SAC") ¶ 7, ECF No. 33.

Mr. Naseri alleges that on June 24, 2023, he was driving for Uber with the Lyft application turned off and dropped off an Uber passenger at SFO. *Id.* ¶ 8. Mr. Naseri alleges he was

---

<sup>1</sup> The parties consent to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c). ECF Nos. 10, 15.

1 “properly displaying an Uber placard.” *Id.* SFO staff member Robert Aganon and an unidentified  
2 coworker stopped Mr. Naseri and told him that his Lyft placard was not in compliance with airport  
3 policy because it was a red color, and that a purple placard was required. *Id.* Mr. Naseri alleges  
4 that he told Mr. Aganon and Mr. Aganon’s coworker that the Lyft permit for SFO does not  
5 mention the color of the placard or specify that it must be purple, and that he would visit the Lyft  
6 office to obtain another placard. *Id.* ¶¶ 9, 10. Mr. Naseri alleges that Mr. Aganon “lost his  
7 temper,” seized Mr. Naseri’s Lyft and Uber placards and emblems without his consent, ordered  
8 Mr. Naseri to exit his car and told him that he was under arrest. *Id.* ¶ 9. Mr. Naseri alleges that  
9 during this encounter, Mr. Aganon called Mr. Naseri a “Middle Eastern driver.” *Id.*

10 On June 24, 2024, an SFO staff member contacted Uber and Lyft to have Mr. Naseri and  
11 his vehicle permanently removed from SFO. *Id.* ¶ 12 and Ex. A to SAC. In response, Lyft  
12 permanently banned Mr. Naseri and his vehicle from SFO and Uber banned Mr. Naseri from all  
13 California airports. SAC ¶ 12. Mr. Naseri received no prior notice or opportunity to contest these  
14 bans. *Id.* Mr. Naseri alleges he “was subjected to harsher treatment than other drivers for similar  
15 or lesser infractions.” *Id.* ¶ 20. Mr. Naseri alleges that while he received a permanent ban, “other  
16 drivers with incorrect placards received warnings or fines[.]” *Id.*

17 Mr. Naseri filed this action against Defendant City and County of San Francisco  
18 (“Defendant” or “the City”) in Superior Court for the City and County of San Francisco on July  
19 15, 2024, alleging violations of Title VII of the Civil Rights Act of 1964 and violation of Article 1,  
20 Section 13 of the California State Constitution. Compl. ¶¶ 9–12, ECF No. 1 at 7–8. Defendant  
21 was properly served on July 19, 2024. ECF No. 1 (Notice of Removal). On August 19, 2024,  
22 Defendant removed the action to this Court pursuant to 28 U.S.C. §§ 1441 and 1446. *Id.*

23 On September 9, 2024, Mr. Naseri filed his First Amended Complaint (FAC). In his FAC,  
24 Mr. Naseri alleged violations of Title VII of the Civil Rights Act of 1964; Article I, Section 13 of  
25 the California Constitution; the Fair Labor Standards Act; 42 U.S.C. § 12203, California Fair  
26 Employment and Housing Act (“FEHA”), and California Unruh Civil Rights Act. *See Am.*  
27 Compl. ¶¶ 12–20, ECF No. 23. On September 23, 2024, Defendant filed a motion to dismiss  
28 Plaintiff’s FAC. ECF No. 27. On November 13, 2024, the Court granted Defendant’s motion to

1 dismiss Plaintiff's claims without leave to amend and granted Plaintiff leave to amend to assert  
2 other legal claims. ECF No. 32 at 10.

3 On November 22, 2024, Mr. Naseri filed his Second Amended Complaint ("SAC"), which  
4 is now the operative complaint in this action. ECF No 33, SAC. In his SAC, Mr. Naseri alleges  
5 eleven claims.<sup>2</sup> Mr. Naseri alleges violations of San Francisco's City Transportation Policy  
6 (Claim 1); San Francisco Airport Rules and Regulations (Claim 2); San Francisco Airport TNC  
7 Policies (Claim 3); 42 U.S.C. § 1983 (Claim 4); the Equal Protection Clause of the Fourteenth  
8 Amendment of the U.S. Constitution (Claim 5); the Due Process Clause of the Fourteenth  
9 Amendment (Claim 6); the Fourth Amendment of the U.S. Constitution (Claim 7); California's  
10 Unfair Competition Law (UCL) (Claim 9); San Francisco Non-Discrimination Ordinances (Claim  
11 10); Article 1, Section 7 of the California Constitution (Claim 11); and the California  
12 Administrative Procedure Act (Cal. Gov. Code § 11340) (Claim 12). *See* SAC ¶¶ 16–26. Mr.  
13 Naseri seeks, *inter alia*, compensatory and punitive damages, monetary remuneration for pain and  
14 suffering, and that he be reinstated as a driver at SFO. *Id.* ¶¶ 27–32. On December 18, 2024,  
15 Defendant filed a motion to dismiss Plaintiff's Second Amended Complaint. ECF No. 37. On  
16 December 19, Plaintiff filed an Opposition (ECF No. 38) and on January 9, 2025, Defendant filed  
17 a Reply (ECF No. 39).

### 18 III. LEGAL STANDARD

19 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) "tests the legal  
20 sufficiency of a claim. A claim may be dismissed only if it appears beyond doubt that the plaintiff  
21 can prove no set of facts in support of his claim which would entitle him to relief." *Cook v.*  
22 *Brewer*, 637 F.3d 1002, 1004 (9th Cir. 2011) (citation and quotation marks omitted). Rule 8  
23 provides that a complaint must contain a "short and plain statement of the claim showing that the  
24 pleader is entitled to relief[.]" Fed. R. Civ. P. 8(a)(2). Thus, a complaint must plead "enough  
25 facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S.  
26

27 

---

<sup>2</sup> Although the SAC only includes eleven claims, Plaintiff has numbered the claims 1–12 and  
28 appears to have omitted a Claim 8. For clarity, the Court refers to each claim using the same  
numeration as the SAC.

1 544, 570 (2007). Plausibility does not mean probability, but it requires “more than a sheer  
2 possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A  
3 complaint must therefore provide a defendant with “fair notice” of the claims against it and the  
4 grounds for relief. *Twombly*, 550 U.S. at 555 (quotations and citation omitted).

5 In considering a motion to dismiss, the court accepts factual allegations in the complaint as  
6 true and construes the pleadings in the light most favorable to the nonmoving party. *Manzarek v.*  
7 *St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008); *Erickson v. Pardus*, 551  
8 U.S. 89, 93–94 (2007). However, “the tenet that a court must accept as true all of the allegations  
9 contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements  
10 of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at  
11 678.

12 If a Rule 12(b)(6) motion is granted, the “court should grant leave to amend even if no  
13 request to amend the pleading was made, unless it determines that the pleading could not possibly  
14 be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en  
15 banc) (citations and quotations omitted). A court “may exercise its discretion to deny leave to  
16 amend due to ‘undue delay, bad faith or dilatory motive on part of the movant, repeated failure to  
17 cure deficiencies by amendments previously allowed, undue prejudice to the opposing party . . . ,  
18 [and] futility of amendment.’” *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 892–93 (9th  
19 Cir. 2010) (alterations in original) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

#### 20 IV. DISCUSSION

##### 21 A. Sur-Replies (ECF Nos. 40, 41, 42)

22 Plaintiff filed an opposition to Defendant’s reply on January 9, 2025. ECF No. 40.  
23 Defendant subsequently filed an objection to Plaintiff’s sur-reply. ECF No. 41. As a basis for  
24 filing a sur-reply, Plaintiff argues Defendant’s reply was untimely because it was filed and served  
25 more than seven days after Plaintiff filed and served his opposition. However, Civil Local Rule 7-  
26 3(c) requires a reply to be filed and served “not more than 7 days after the opposition *was due27 Civ. L. R. 7-3(c) (emphasis added). Although Plaintiff filed and served his opposition on  
28 December 19, 2024, his opposition was not due until January 2, 2025. The City filed its reply on*

1 January 9, 2025, not more than 7 days after the opposition was due. Because Defendant timely  
2 filed its reply, the Court does not consider Plaintiff's Opposition to Defendant's Reply (ECF No.  
3 40) in deciding this motion, nor does it consider Plaintiff's subsequent Response to Defendant's  
4 Objection to Plaintiff's Opposition to Defendant's Reply (ECF No. 42).

5 **B. Requests for Judicial Notice**

6 Federal Rule of Evidence 201 allows the Court to "judicially notice a fact that is not  
7 subject to reasonable dispute because it . . . can be accurately and readily determined from sources  
8 whose accuracy cannot reasonably be questioned." F.R.E. 201(b)(2). Courts may consider  
9 "matters of public record" in deciding a motion to dismiss. *Northstar Fin. Advisors Inc. v.*  
10 *Schwab Invs.*, 779 F.3d 1036, 1042 (9th Cir. 2015) (quoting *Coto Settlement v. Eisenberg*, 593  
11 F.3d 1031, 1038 (9th Cir. 2010)).

12 **1. Defendant's Request for Judicial Notice**

13 Defendant asks the Court to take judicial notice of five records:

- 14 1. Rules and Regulations of the San Francisco International Airport  
15 ("SFO"), issued by the Airport Commission of the City ("SFO Rules  
and Regulations").
- 16 2. Transportation Network Company Commercial Ground  
17 Transportation Non-Exclusive Operating Permit at SFO by and  
between Lyft and the City ("Lyft Permit") dated January 1, 2023.
- 18 3. Notice dated January 20, 2023 regarding "Placards for new TNC  
19 permits effective 1/1/2023," from SFO Landside Operations Data  
Analytics Manager Annie Chung to "Transportation Network  
Company Permittees" to "Transportation Network Company  
Permittees" (the "SFO Notice to TNC Permittees").
- 20 4. Plaintiff Zahir Naseri's Government Claim, submitted to the City  
on July 28, 2023, and which the City received on August 16, 2023.
- 21 5. The City's Notice of Action Upon Claim denying Plaintiff's  
22 Government Claim, dated August 22, 2023.

23 ECF Nos. 37-7 (request for judicial notice); 37-1 (declaration of Edmund T. Wang); 37-2, 37-3,  
24 37-4, 37-5 and 37-6 (Exs. A–E to Wang Decl.).

25 Plaintiff objects to judicial notice of each of these records. ECF No. 38-2 at 2–3. Plaintiff  
26 contends that the facts contained within these records are disputed and "not generally known or  
27 capable of accurate determination." ECF No. 38-1 at 2. However, Plaintiff attaches copies of  
28

1 each of these records in support of his opposition and describes each document as a true and  
2 correct copy thereof.<sup>3</sup> ECF No. 38-1 at 2-3 (Decl. of Zahir Naseri) and Exs. A–E to Naseri Decl.  
3 (ECF Nos. 38-4–38-8). “Generally, district courts may not consider material outside the pleadings  
4 when assessing the sufficiency of a complaint under Rule 12(b)(6)[.]” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018); *see Fed. R. Civ. P. 12(b)(6); 12(d)*. For the  
5 Court to consider these records, they must either be incorporated by reference or judicially noticed  
6 under Federal Rule of Evidence 201. *Khoja*, 899 F.3d at 998.

7  
8 As it did in its order on Defendant’s motion to dismiss Plaintiff’s First Amended  
9 Complaint, the Court takes judicial notice of Mr. Naseri’s July 28, 2023 claim against the City  
10 because it is a matter of public record that is not subject to reasonable dispute and takes judicial  
11 notice of the City’s August 22, 2023, Notice of Action Upon Claim. *See Roy v. Contra Costa Cnty.*, No. 15-cv-02672-TEH, 2015 WL 5698743, at \*2 n.6 (N.D. Cal. Sept. 29, 2015) (taking  
12 judicial notice of plaintiff’s Government Claim and city defendants’ notice rejecting claim).

13  
14 The Court takes judicial notice of the SFO Rules and Regulations because they are matters  
15 of public record that are not subject to reasonable dispute and because they are essential to  
16 Plaintiff’s claims. *See Cloud v. Brennan*, 436 F. Supp. 3d 1290, 1303 (N.D. Cal. 2020) (“[a] court  
17 may also ‘take judicial notice of documents on which allegations in the complaint necessarily rely,  
18 even if not expressly referenced in the complaint, provided that the authenticity of those  
19 documents is not in dispute’”) (quoting *Tercica, Inc. v. Insmed Inc.*, 2006 WL 1626930, \*8 (N.D.  
20 Cal. June 9, 2006)); SAC ¶ 17 (alleging violation of SFO Rules and Regulations). *See also Chew v. City & Cty. of San Francisco*, No. 13-CV-05286-MEJ, 2016 WL 631924, at \*1 (N.D. Cal. Feb. 21, 2016) (“The Court may take judicial notice of matters of public record, including official  
22 municipal enactments, ordinances and statutes.”) (citing *Santa Monica Food Not Bombs v. City of*  
23  
24

25  
26  
27  
28 

---

<sup>3</sup> Defendant and Plaintiff offers different copies of Mr. Naseri’s government claim and of the City’s Notice of Action Upon Claim. The record of Plaintiff’s government claim that Defendant submits is marked as received, stamped with a filing number and designated as “airport” (ECF No. 37-5), while Plaintiff offers a copy of the claim without those notations. ECF No. 38-7. The Notice of Action Upon Claim offered by the City includes a proof of service by mail dated August 22, 2023 (ECF No. 37-6 at 3), while the Notice of Action Upon Claim attached to Plaintiff’s opposition does not include the proof of service by mail. ECF No. 38-8.

1        *Santa Monica*, 450 F.3d 1022, 1025 n.2 (9th Cir. 2006)), *aff'd*, 714 F. App'x 687 (9th Cir. 2017).

2              The Court likewise takes judicial notice of the January 1, 2023 Lyft Permit to operate at  
3 SFO, as the SAC explicitly references this document and its authenticity is not disputed by  
4 Plaintiff. *See* SAC ¶¶ 9, 10, 18; Naseri Decl. at 3 and Ex. B to Naseri Decl. (attaching Lyft Permit  
5 in support of opposition).

6              The Court determines not to take judicial notice of the January 20, 2023 SFO Notice to  
7 TNC Permittees, as it is not clear who received this notice. Although Plaintiff offers this same  
8 notice in support of his opposition (*see* Naseri Decl. and Ex. C to Naseri Decl.), neither party  
9 indicates that Plaintiff was among the “TNC Permittees” who received this notice. *See* ECF No.  
10 37-3 at 2 (Lyft Permit naming Lyft, rather than its drivers, as the “Permittee”).

11              **2. Plaintiff's Request for Judicial Notice**

12              Plaintiff seeks judicial notice of twenty-seven cases from various courts. ECF No. 38-3.  
13 The Court determines not to take judicial notice of these cases, as judicial notice pertains to  
14 adjudicative facts rather than case law. *See* Fed. R. Evid. 201. *See also Mohanna v. Bank of Am.*,  
15 N.A., No. 16-cv-01033-HSG, 2017 WL 976015, at \*2 n.2 (N.D. Cal. Mar. 14, 2017) (“[t]he Court  
16 need not take ‘judicial notice’ of relevant case law”); *Garcia v. Corizon Health, Inc.*, 816 F. App'x  
17 144, 145 (9th Cir. 2020) (unpublished) (denying request for judicial notice of district court case  
18 law as “unnecessary”).

19              **C. Federal Claims**

20              Plaintiff alleges four claims under federal law. Mr. Naseri alleges “violation of 42 U.S.C.  
21 § 1983,” violations of the equal protection and due process clauses of the Fourteenth Amendment  
22 of the U.S. Constitution, and violation of the Fourth Amendment of the U.S. Constitution. SAC ¶¶  
23 19–22.

24              “[A] litigant complaining of a violation of a constitutional right does not have a direct  
25 cause of action under the United States Constitution but must utilize 42 U.S.C. § 1983.” *Arpin v.*  
26 *Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001). The Civil Rights Act,  
27 codified at 42 U.S.C. § 1983, provides in relevant part:

1                  Every person who, under color of [state law] . . . subjects, or causes  
 2                  to be subjected, any citizen of the United States or other person within  
 3                  the jurisdiction thereof to the deprivation of any rights, privileges, or  
 4                  immunities secured by the Constitution . . . shall be liable to the party  
 5                  injured in an action at law, suit in equity, or other proper proceeding  
 6                  for redress . . .  
 7  
 8                  “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a method for  
 9                  vindicating federal rights elsewhere conferred.’” *Graham v. Connor*, 490 U.S. 386, 393–94  
 10                 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). “[M]unicipalities and other  
 11                 local government units . . . [are] among those persons to whom § 1983 applies.” *Monell v. Dep’t  
 12                 of Soc. Servs. of City of New York*, 436 U.S. 658, 690 (1978).

13                 The City and County of San Francisco is the sole Defendant in this action.<sup>4</sup> To establish  
 14                 municipal liability for a constitutional violation under Section 1983, plaintiffs “must prove that  
 15                 ‘action pursuant to official municipal policy’ caused their injury.” *Connick v. Thompson*, 563 U.S.  
 16                 51, 60 (2011) (quoting *Monell*, 563 U.S. at 691). “The ‘official policy’ requirement was intended  
 17                 to distinguish acts of the *municipality* from acts of *employees* of the municipality, and thereby  
 18                 make clear that municipal liability is limited to action for which the municipality is actually  
 19                 responsible.” *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479 (emphasis in original). Official  
 20                 municipal policy includes “the decisions of a government’s lawmakers, the acts of its  
 21                 policymaking officials, and practices so persistent and widespread as to practically have the force  
 22                 of law.” *Connick*, 563 U.S. at 61 (citations omitted). Such policy or practice must be a “moving  
 23                 force behind a violation of constitutional rights.” *Dougherty v. City of Covina*, 654 F.3d 892, 900  
 24                 (9th Cir. 2011) (citing *Monell*, 436 U.S. at 694). An official municipal policy may be either  
 25                 formal or informal. *City of St. Louis v. Praprotnik*, 485 U.S. 112, 131 (1988) (acknowledging that  
 26                 a plaintiff could show that “a municipality’s actual policies were different from the ones that had  
 27                 been announced.”).

28                 In the Ninth Circuit, a municipality may be liable under section 1983 under three possible  
 29                 theories. *Rodriguez v. Cnty. of Los Angeles*, 891 F.3d 776, 802 (9th Cir. 2018). The first is where

---

<sup>4</sup> Plaintiff twice refers to “Defendant Aganon” in his SAC (SAC ¶¶ 9–10) and describes “the defendant” as “SFO staff and airport authority” (SAC ¶ 19). However, Plaintiff only names as a defendant “San Francisco International Airport[,]” “operat[ing] under the authority of the City and County of San Francisco.” *Id.* ¶ 3.

1 “execution of a government’s policy or custom, whether made by its lawmakers or by those whose  
2 edicts or acts may fairly be said to represent official policy, inflict[ed] the injury.” *Id.* (quoting  
3 *Monell*, 436 U.S. at 694). “A policy or custom may be found either in an affirmative proclamation  
4 of policy or in the failure of an official ‘to take any remedial steps after [constitutional]  
5 violations.’” *Gomez v. Vernon*, 255 F.3d 1118, 1127 (9th Cir. 2001) (quoting *Larez v. City of Los  
6 Angeles*, 946 F.2d 630, 647 (9th Cir. 1991) (holding that a jury could find a policy or custom of  
7 using excessive force from the police chief’s failure to discipline officers for such conduct)); *see also Hunter v. Cnty. of Sacramento*, 652 F.3d 1225, 1235 (9th Cir. 2011) (holding “evidence of a  
8 recurring failure to investigate and discipline municipal officers for constitutional violations can  
9 help establish the existence of an unconstitutional practice or custom” of using excessive force).  
10 Second, “a local government can fail to train employees in a manner that amounts to ‘deliberate  
11 indifference’ to a constitutional right, such that ‘the need for more or different training is so  
12 obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the  
13 policymakers of the city can reasonably be said to have been deliberately indifferent to the need.’”  
14 *Rodriguez*, 891 F.3d at 802 (quoting *City of Canton v. Harris*, 489 U.S. 378, 390 (1989)). Third, a  
15 municipality may be liable under section 1983 if “the individual who committed the constitutional  
16 tort was an official with final policy-making authority or such an official ratified a subordinate’s  
17 unconstitutional decision or action and the basis for it.” *Id.* at 802–03 (quoting *Gravellet-Blondin  
18 v. Shelton*, 728 F.3d 1086, 1097 (9th Cir. 2013) (internal quotation marks and citation omitted)).

20 Plaintiff asserts in his opposition that he alleges, *inter alia*, “[a] widespread practice by the  
21 City of discriminatory enforcement of transportation-related policies” and “[a] failure to  
22 adequately train or supervise employees, leading to violations of Plaintiff’s First, Fourth, and  
23 Fourteenth Amendment rights[,]” and “[p]olicies that disproportionately impact minority business  
24 owners[.]” Opp’n at 3–4. Plaintiff further maintains in his opposition that SFO’s ban on him  
25 working as a Lyft and Uber driver at the airport and alleged “enforcement of a ‘Purple’ Lyft  
26 placard requirement” indicate “a broader custom or practice that led to the violation of the  
27 plaintiff’s constitutional rights.” Opp’n at 2. But Plaintiff’s SAC does not contain allegations  
28 regarding any allegedly unconstitutional policy or custom of the City and County of San Francisco

1 that its employees followed and which caused the deprivation of Mr. Naseri's constitutional rights.  
2 See generally SAC. Nor does Plaintiff allege a disproportionate impact of Defendant's alleged  
3 actions on minority business owners or make any allegations regarding the training supervision of  
4 employees. *Id.*

5 The SAC contains references to the City's "transportation policy," SFO's "permit policy,"  
6 and "SFO TNC permit terms[.]" See SAC ¶¶ 8, 10, 15, 16, 18. However, Mr. Naseri alleges that  
7 the City violated these policies by banning him from working as a driver at SFO; he does not  
8 allege that the policies were themselves unconstitutional. Without identifying a relevant allegedly  
9 unconstitutional municipal policy or custom, Mr. Naseri cannot establish municipal liability for a  
10 constitutional violation under Section 1983. As all of Mr. Naseri's federal claims arise under the  
11 U.S. constitution, they must be dismissed.

12 Accordingly, the Court **GRANTS** Defendant's motion to dismiss Plaintiff's federal claims  
13 against the City and County of San Francisco. The Court **GRANTS** Plaintiff leave to amend.

14 **D. State Law Claims**

15 Plaintiff's SAC includes three claims under California state law. Plaintiff alleges violation  
16 of California's Unfair Competition law; Article 1, Section 7 of the California Constitution; and the  
17 California Administrative Procedure Act. SAC ¶¶ 23, 25, 26. Defendant contends Plaintiff's state  
18 law claims are time barred because Plaintiff failed to file suit within six months of the City  
19 mailing its denial of his Government Claim. Mot. at 26–27.

20 The California Government Claims Act, Cal. Gov't Code § 810 et seq., "is a  
21 comprehensive statutory scheme that sets forth the liabilities and immunities of public entities and  
22 public employees for torts." *Cordova v. City of Los Angeles*, 61 Cal. 4th 1099, 1104–05 (2015)  
23 (quotation marks omitted). The Government Claims Act requires plaintiffs to present "all claims  
24 for money or damages against local public entities' . . . to the responsible public entity before a  
25 lawsuit is filed." *City of Stockton v. Superior Court*, 42 Cal. 4th 730, 734 (2007) (quoting Cal.  
26 Gov't Code § 905). A plaintiff seeks "money or damages" when actual damages are the primary  
27 relief the plaintiff seeks. *Lozada v. City & Cnty. of San Francisco*, 145 Cal. App. 4th 1139, 1163–  
28 64 (2006); see also *Williams v. City of Antioch*, No. 08-cv-02301-SBA, 2010 WL 3632199, at \*5

1 (N.D. Cal. Sept. 2, 2010). A plaintiff must file a lawsuit “not later than six months after the date  
 2 [the notice of rejection] is personally delivered or deposited in the mail.” Cal. Gov’t Code §  
 3 945.6(a)(1). A plaintiff’s complaint must “allege facts demonstrating or excusing compliance with  
 4 this claim presentation requirement[.]” *State of California v. Superior Ct.*, 32 Cal. 4th 1234, 1237  
 5 (2004). *See also Mangold v. Cal. Pub. Utilities Comm’n*, 67 F.3d 1470, 1477 (9th Cir. 1995)  
 6 (requiring plaintiff to “allege compliance or circumstances excusing compliance” with the  
 7 California Tort Claims Act).

8       The Government Claims Act applies to claims for money damages for violations of the  
 9 California Constitution except where there is a “conflict between the constitutional provisions and  
 10 the Government Claims Act immunity provisions.” *Krolkowski v. San Diego City Employees’*  
 11 *Ret. Sys.*, 24 Cal. App. 5th 537, 553 (2018); *see also* Cal. Gov’t Code § 815, Legislative Comm.  
 12 Comments (providing that the Government Claims Act “abolishes all common law or judicially  
 13 declared forms of liability for public entities, except for such liability as may be required by the  
 14 state or federal constitution”).

15       In his SAC, Mr. Naseri seeks \$350,000 in compensatory damages, \$950,000 in pain and  
 16 suffering, punitive damages of \$650,000, and that he be reinstated as a driver at SFO. SAC ¶¶ 27–  
 17 30. There is no conflict between the Government Claims Act and article I, section 7 of the  
 18 California Constitution, under which Mr. Naseri brings his lone state constitutional claim.<sup>5</sup> Cal.  
 19 Const. Art. 1, § 7. Mr. Naseri must therefore allege facts in his complaint demonstrating or  
 20 excusing compliance with the Government Claims Act to state any of his state claims. Mr. Naseri  
 21 does not do so.

22       The Court previously held amendment of Plaintiff’s state law claims was futile because  
 23 Plaintiff failed to bring his claims within six months of the date the City provided notice of  
 24 rejection of his claims. ECF No. 32 at 9. As discussed in the Court’s order granting Defendant’s  
 25 motion to dismiss Plaintiff’s FAC, the City mailed a notice rejecting Mr. Naseri’s July 28 claim on

---

26  
 27       <sup>5</sup> Moreover, California courts do not recognize a right to seek damages to remedy violations of  
 28 article 1, section 7(a) of the California constitution, which provides a right to due process. *See Katzberg v. Regents of Univ. of California*, 29 Cal. 4th 300, 328 (2002).

1 August 22, 2023. *See* ECF No. 32 at 9; *see also* ECF No. 37-6 (Notice of Action Upon Claim).  
2 The six month period to bring a claim begins running when the notice is deposited in the mail.  
3 Cal. Gov't Code § 945.6(a)(1). Mr. Naseri filed his original complaint in Superior Court for the  
4 City and County of San Francisco over ten months later, on July 15, 2024. ECF No. 1. Although  
5 Mr. Naseri describes his state law claims as "timely," he does not dispute that he failed to bring  
6 those claims within six months of the rejection's deposit in the mail. *See generally* Opp'n. Nor  
7 does Mr. Naseri allege any circumstances excusing compliance with the Government Claims Act.  
8 *Id.* Because Plaintiff's SAC fails to allege compliance or circumstances excusing compliance with  
9 the Government Claims Act, his state law claims against the City must be dismissed.  
10 Accordingly, the Court **GRANTS** Defendant's motion to dismiss Plaintiff's state law claims. As  
11 amendment would be futile, the Court denies Plaintiff leave to amend those claims.

12 **E. Claims Based on San Francisco Policies, Rules, Regulations and Ordinances**

13 Mr. Naseri alleges violations of San Francisco's City Transportation Policy, San Francisco  
14 Airport Rules and Regulations ("SFO Rules and Regulations"), San Francisco Airport TNC  
15 Policies, and the City's Non-Discrimination Ordinances. *See* SAC ¶¶ 16, 17, 18, 24.

16 Mr. Naseri alleges that the City violated its transportation policy by imposing a permanent  
17 ban "for a first-time minor violation" and enforcing a "purple" Lyft placard requirement that  
18 Plaintiff asserts is not supported by policy or law. *Id.* ¶ 16. Mr. Naseri alleges that this conduct  
19 likewise violated the SFO Rules and Regulations because they require progressive enforcement for  
20 violations, beginning with fines for first offenses. *Id.* ¶ 17. Mr. Naseri alleges that the City  
21 violated the "SFO TNC Permit Terms" dated January 1, 2023, by "arbitrarily enforc[ing] a non-  
22 existent policy, violating the principle of proportionality and progressive discipline as outlined by  
23 the California Public Utilities Commission Rules (CPUC) Rules and the San Francisco  
24 Transportation Policy, by exceeding SFO's authority to permanently ban the plaintiff from all  
25 airports in California." *Id.* ¶ 18. Mr. Naseri alleges the City violated San Francisco's Non-  
26 Discrimination Ordinances because its treatment of Mr. Naseri was motivated by his protected  
27 status. *Id.* ¶ 24. Mr. Naseri alleges he experienced "harassment and escalating penalties" that  
28 similarly situated drivers of a different race, color and national origin did not face and that an SFO

1 employee called Mr. Naseri a “Middle Eastern driver.” *Id.* ¶¶ 19, 20, 24.

2       **1. Private Rights of Action for Violations of Municipal Policies, Regulations and**  
3       **Ordinances**

4           Defendant contends none of these policies or ordinances create a private right of action.  
5 Mot. at 12. Plaintiff asserts that Article 33 of the San Francisco Police Code provides a private  
6 right of action. Opp’n at 8. Article 33 of the San Francisco Police Code is a non-discrimination  
7 ordinance prohibiting several forms of discrimination within the City and County of San  
8 Francisco, including discrimination in certain contexts on the basis of race, color and national  
9 origin. Sec. 3301. This article provides for enforcement through civil action (Sec. 3307(c)) and  
10 prohibits discrimination by employers, employment agencies and labor organizations (*see* Sec.  
11 3303); discrimination in housing and long-term care facilities (Sec. 3304, 3304.1), in business  
12 establishments and public accommodations (Sec. 3305), and by business entities providing home  
13 delivery services (Sec. 3305.1). Plaintiff’s SAC does not mention or identify Article 33 of the San  
14 Francisco Police Code as a basis for any of his claims, let alone identify the section that Plaintiff  
15 believes applies to Defendant’s conduct. Accordingly, to the extent Plaintiff’s claim is based on  
16 the alleged violation of the San Francisco police code, the SAC fails to provide Defendant with  
17 fair notice of the claims against it. *See Twombly*, 550 U.S. at 555.

18       **2. Constitutional Claims for Violations of Municipal Policies, Regulations and**  
19       **Ordinances**

20           Plaintiff maintains that his claims for violations of Defendant’s municipal policies,  
21 regulations and ordinances do not require those policies to confer a private right of action because  
22 they are “premised . . . on the Defendant’s misuse of these policies to infringe upon the Plaintiff’s  
23 constitutional rights.” Opp’n at 5–6. However, allegations that a local government violated its  
24 own policies and ordinances cannot give rise to a claim of a violation of the U.S. Constitution.  
25 *See Ashley v. City & Cnty. of San Francisco*, No. 12-cv-00045-JST, 2014 WL 4627736, at \*8  
26 (N.D. Cal. Feb. 4, 2014) (“to the extent that [the plaintiff] contends that [the defendant’s] failure to  
27 comply with the [Sheriff’s] Department’s policies in itself violated his Fourth Amendment rights,  
28 the contention is unavailing because the Ninth Circuit has squarely rejected the notion that

1 constitutional duties can arise from a governmental entity's policies."). Accordingly, Plaintiff  
2 fails to state a constitutional claim for violations of San Francisco's City Transportation Policy,  
3 SFO Rules and Regulations, San Francisco Airport TNC Policies, or the San Francisco's non-  
4 discrimination ordinances. The Court grants Plaintiff leave to amend such claims.

5 **3. State Claims for Violations of Municipal Polices, Regulations and Ordinances**

6 As discussed above, Plaintiff does not allege compliance or circumstances excusing  
7 compliance with the Government Claims Act. Accordingly, to the extent any of these policies,  
8 rules, regulations and ordinances give rise to state law claims, any such state law claims are barred  
9 by the Government Claims Act. Because amendment would be futile, the Court denies Plaintiff  
10 leave to amend his claims for violations of municipal policies, regulations and ordinances to the  
11 extent they arise under state law.

12 **4. Conclusion – Claims for Violations of Municipal Policies, Regulations and  
13 Ordinances**

14 Accordingly, the Court **GRANTS** Defendant's motion to dismiss Plaintiff's claims for  
15 violations of San Francisco's City Transportation Policy, San Francisco Airport Rules and  
16 Regulations ("SFO Rules and Regulations"), San Francisco Airport TNC Policies, and the City's  
17 Non-Discrimination Ordinances. The Court **DENIES** leave to amend such claims to the extent  
18 they arise under state law, and otherwise **GRANTS** Plaintiff leave to amend these claims,  
19 including under municipal law.

20 **F. Leave to Amend**

21 The Ninth Circuit has "repeatedly held that a district court should grant leave to amend  
22 even if no request to amend the pleading was made, unless it determines that the pleading could  
23 not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th  
24 Cir. 2000). Courts have broader discretion in denying motions for leave to amend after leave to  
25 amend has already been granted. *See Rich v. Shrader*, 823 F.3d 1205, 1209 (9th Cir. 2016)  
26 ("[W]hen the district court has already afforded a plaintiff an opportunity to amend the complaint,  
27 it has wide discretion in granting or refusing leave to amend after the first amendment, and only  
28 upon gross abuse will its rulings be disturbed."); *Chodos v. W. Publ'g Co.*, 292 F.3d 992, 1003

1 (9th Cir. 2002).

2 The Court previously denied Plaintiff leave to amend his previous state law claims, finding  
3 amendment of those claims futile because he failed to allege compliance or circumstances  
4 excusing compliance with the Government Claims Act. Plaintiff's SAC does not include any such  
5 allegations. Accordingly, the Court **DENIES** Plaintiff leave to amend his state law claims. The  
6 Court **GRANTS** Plaintiff leave to amend all other claims.

7 **V. CONCLUSION**

8 For the reasons stated above, the Court **GRANTS** Defendant's motion to dismiss  
9 Plaintiff's Second Amended Complaint. The Court **GRANTS** Plaintiff leave to amend his federal  
10 claims and to allege claims under municipal law and **DENIES** Plaintiff leave to amend his state  
11 law claims. If Plaintiff chooses to file a Third Amended Complaint, he must do so by February  
12 21, 2025.

13 **IT IS SO ORDERED.**

14  
15 Dated: January 22, 2025

16   
17 THOMAS S. HIXSON  
18 United States Magistrate Judge

19  
20  
21  
22  
23  
24  
25  
26  
27  
28